

Rule 295. Small Tax Case Procedure in Actions for Redetermination of Employment Status

(a) Small Tax Case Under Code Section 7436(c)

Defined: The term “small tax case under Code Section 7436(c)” for purposes of this Title means a case in which:

(1) The amount of employment taxes placed in dispute is \$50,000 or less for each calendar quarter involved;

(2) The petitioner has made a request in accordance with paragraph (b) of this Rule to have the proceedings conducted under Code Section 7436(c); and

(3) The Court has not issued an order in accordance with paragraph (c) of this Rule, discontinuing the proceedings in the case under Code Section 7436(c).

(b) Election of Small Tax Case Procedure in Actions for Redetermination of Employment Status:

With respect to classification of a case as a small tax case under Code Section 7436(c), the following shall apply:

(1) A petitioner who wishes to have the proceedings in the case conducted under Code Section 7436(c) may so request at the time the petition is filed. See subparagraph (d)(1) of this Rule.

(2) A petitioner may, at any time after the petition is filed and before trial, request that the proceedings be conducted under Code Section 7436(c). Such request shall contain a statement that the amount of employment taxes placed in dispute is \$50,000 or less for each calendar quarter involved.

(3) If such request is made in accordance with the provisions of this paragraph, then the case will be docketed as a small tax case under Code Section 7436(c). The Court, on its own motion or on the motion of a party to the case, may, at any time before the trial commences, issue an order directing that the small tax case designation shall be removed and that the proceedings shall not be conducted as a small tax case under Code Section 7436(c). If no such order is issued, then the petitioner will be considered to have exercised the petitioner's option and the Court shall be deemed to have concurred therein, in accordance with Code Section 7436(c), at the commencement of the trial.

(c) Discontinuance of Proceedings: After the commencement of a trial of a small tax case under Code Section 7436(c), but before the decision in the case becomes final, the Court may order that the proceedings be discontinued under Code Section 7436(c), and that the case be tried under the Rules of Practice other than those applicable to small tax cases under Code Section 7436(c), but such order will be issued only if:

(1) there are reasonable grounds for believing that the amount of employment taxes placed in dispute will exceed \$50,000 for each calendar quarter involved; and

(2) The Court finds that justice requires the discontinuance of the proceedings under Code Section 7436(c), taking into consideration the convenience and expenses for both parties that would result from the order.

(d) Pleadings in Small Tax Case Under Code Section 7436(c): (1) *Petition:* A petition in a small

tax case under Code Section 7436(c) shall be commenced in accordance with and shall contain the information required by Rule 291. In addition, such petition shall contain the following:

(A) A request that the proceedings be conducted under Code Section 7436(c); and

(B) A statement that the amount of employment taxes placed in dispute is \$50,000 or less for each calendar quarter involved.

(2) *Other Pleadings:* For provisions relating to the filing of other pleadings, see Rule 175(b) and (c).

(e) Applicable Small Tax Case Rules of Title XVII: Proceedings in a small tax case under Code Section 7436(c) shall be governed by the provisions of the following Small Tax Case Rules of Title XVII (see Rule 170) with respect to the matters to which they apply: Rule 174 (representation); Rule 176 (preliminary hearing); Rule 177 (trial); Rule 178 (transcript of proceedings); and Rule 179 (number of copies of papers).

EFFECTIVE DATE OF AMENDMENT

Amendment increasing dollar amount from \$10,000 to \$50,000 throughout Rule is effective with respect to proceedings commenced after July 22, 1998.

TITLE XXIX.—LARGE PARTNERSHIP ACTIONS¹

Rule 300. General

(a) Applicability: The Rules of this Title XXIX set forth the special provisions that apply to actions for readjustment of partnership items of large partnerships under Code Section 6247 and actions for adjustment of partnership items of large partnerships under Code Section 6252. Except as otherwise provided in this Title, the other Rules of Practice and Procedure of the Court, to the extent pertinent, are applicable to such large partnership actions.

(b) Definitions: As used in the Rules in this Title—

(1) The term “large partnership” means an electing large partnership as defined in Code Section 775. See Code Section 6255(a)(1).

(2) A “large partnership action” is either an “action for readjustment of partnership items of a large partnership” under Code Section 6247 or an “action for adjustment of partnership items of a large partnership” under Code Section 6252.

(3) The term “partnership item” means any item described in Code Section 6231(a)(3). See Code Section 6255(a)(2).

(4) The term “partnership adjustment” means any adjustment in the amount of any partnership item of a large partnership. See Code Section 6242(d)(1).

(5) The term “designated partner” means the partner or person designated by the large partnership or selected by the Commissioner pursuant to Code Section 6255(b)(1).

(6) A “notice of partnership adjustment” is the notice described in Code Section 6245(b).

(7) The term “administrative adjustment request” means a request for an administrative

¹ Title XXIX provided on an interim basis pending formal publication in the Reports of the Court by the Government Printing Office.

adjustment of partnership items filed by the large partnership under Code Section 6251(a).

(c) Jurisdictional Requirements: The Court does not have jurisdiction of a large partnership action under this Title unless the following conditions are satisfied:

(1) *Actions for Readjustment of Partnership Items of Large Partnerships:* (A) The Commissioner has issued a notice of partnership adjustment. See Code Section 6245(b).

(B) A petition for readjustment of partnership items of a large partnership is filed with the Court by the large partnership within the period specified in Code Section 6247(a).

(2) *Actions for Adjustment of Partnership Items of Large Partnerships:* (A) The Commissioner has not allowed all or some of the adjustments requested in an administrative adjustment request. See Code Section 6252(a).

(B) A petition for adjustment of partnership items of a large partnership is filed with the Court by the large partnership subject to the conditions and within the period specified in Code Section 6252(b) and (c).

(d) Form and Style of Papers: All papers filed in a large partnership action shall be prepared in the form and style set forth in Rule 23, and the caption shall state the name of the partnership, as for example, "ABC Partnership, Petitioner".

EFFECTIVE DATE

Title XXIX sets forth procedures for actions under sections 6247 and 6252 of this title, as added by section 1222(a) of the Taxpayer Relief Act of 1997, Pub. L. 105-34, 111 Stat. 1008. Section 6247 of this title provides for judicial review of the Commissioner's notice of partnership adjustment (action for readjustment of partnership items of a large partnership under section 6247) and section 6252 of this title provides for judicial review of the Commissioner's failure to allow all or some of the adjustments requested in an administrative adjustment request (action for adjustment of partnership items of a large partnership under section 6252). Sections 6247 and 6252 of this title are effective with respect to partnership tax years ending on or after Dec. 31, 1997, and the Rules of Title XXIX likewise are effective with respect to large partnership actions commenced with respect to partnership tax years ending on or after Dec. 31, 1997.

Rule 301. Commencement of Large Partnership Action

(a) Commencement of Action: A large partnership action shall be commenced by filing a petition with the Court. See Rule 20, relating to commencement of case; Rule 22, relating to the place and manner of filing the petition; Rule 32, relating to form of pleadings; Rule 34(d), relating to number of copies to be filed; and Rule 300(d), relating to caption of papers.

(b) Content of Petition: Each petition shall be entitled either "Petition for Readjustment of Partnership Items of a Large Partnership Under Code Section 6247" or "Petition for Adjustment of Partnership Items of a Large Partnership Under Code Section 6252". Each such petition shall contain the allegations described in paragraph (c) of this Rule, and the allegations described in either paragraph (d) or (e) of this Rule.

(c) All Petitions: All petitions in large partnership actions shall contain the following:

(1) The name, employer identification number, and principal place of business of the large partnership at the time the petition is filed.

(2) The City and State of the office of the Internal Revenue Service with which the large partnership's return for the period in controversy was filed.

(3) A separate numbered paragraph setting forth the name and current address of the designated partner.

A claim for reasonable litigation or administrative costs shall not be included in the petition in a large partnership action. For the requirements as to claims for reasonable litigation or administrative costs, see Rule 231.

(d) Petition for Readjustment of Partnership Items of a Large Partnership: In addition to including the information specified in paragraph (c) of this Rule, a petition for readjustment of partnership items of a large partnership shall also contain:

(1) The date of the notice of partnership adjustment and the City and State of the office of the Internal Revenue Service that issued the notice.

(2) The year or years or other periods for which the notice of partnership adjustment was issued.

(3) Clear and concise statements of each and every error which the petitioner alleges to have been committed by the Commissioner in the notice of partnership adjustment. The assignments of error shall include issues in respect of which the burden of proof is on the Commissioner. Any issues not raised in the assignments of error, or in the assignments of error in any amendment to the petition, shall be deemed to be conceded. Each assignment of error shall be set forth in a separate lettered subparagraph.

(4) Clear and concise lettered statements of the facts on which the petitioner bases the assignments of error, except with respect to those assignments of error as to which the burden of proof is on the Commissioner.

(5) A prayer setting forth relief sought by the petitioner.

(6) The signature, mailing address, and telephone number of the petitioner's designated partner or the petitioner's counsel, as well as counsel's Tax Court bar number.

(7) A copy of the notice of partnership adjustment, which shall be appended to the petition, and with which there shall be included so much of any statement accompanying the notice as is material to the issues raised by the assignments of error. If the notice of partnership adjustment or any accompanying statement incorporates by reference any prior notices, or other material furnished by the Internal Revenue Service, such parts thereof as are material to the assignments of error likewise shall be appended to the petition.

(e) Petition for Adjustment of Partnership Items of a Large Partnership: In addition to including the information specified in paragraph (c) of this Rule, a petition for adjustment of partnership items of a large partnership shall also contain:

(1) The date that the administrative adjustment request was filed and other proper allegations showing jurisdiction in the Court in accordance with the requirements of Code Section 6252(b) and (c).

(2) The year or years or other periods to which the administrative adjustment request relates.

(3) The City and State of the office of the Internal Revenue Service with which the administrative adjustment request was filed.

(4) A clear and concise statement describing each partnership item on the large partnership return that is sought to be changed, and the basis for each such requested change. Each such statement shall be set forth in a separately lettered subparagraph.

(5) Clear and concise lettered statements of the facts on which the petitioner relies in support of such requested changes in treatment of partnership items.

(6) A prayer setting forth relief sought by the petitioner.

(7) The signature, mailing address, and telephone number of the petitioner's designated partner or the petitioner's counsel, as well as counsel's Tax Court bar number.

(8) A copy of the administrative adjustment request shall be appended to the petition.

(f) Joinder of Parties: (1) *Permissive Joinder:* A separate petition shall be filed with respect to each notice of partnership adjustment issued to separate large partnerships. However, a single petition for readjustment of partnership items of a large partnership or petition for adjustment of partnership items of a large partnership may be filed seeking readjustments or adjustments of partnership items with respect to more than one notice of partnership adjustment or administrative adjustment request if the notices or requests pertain to the same large partnership.

(2) *Severance or Other Orders:* With respect to a case based upon multiple notices of partnership adjustment or administrative adjustment requests, the Court may order a severance and a separate case may be maintained with respect to one or more of such notices or requests whenever it appears to the Court that proceeding separately is in furtherance of convenience, or to avoid prejudice, or when separate trials will be conducive to expedition or economy.

Rule 302. Designation of Place of Trial

At the time of filing a petition in a large partnership action, a designation of place of trial shall be filed in accordance with Rule 140.

Rule 303. Other Pleadings

(a) Answer: The Commissioner shall file an answer or shall move with respect to the petition within the periods specified in and in accordance with the provisions of Rule 36.

(b) Reply: For provisions relating to the filing of a reply, see Rule 37.

Rule 304. Joinder of Issue in Large Partnership Actions

A large partnership action shall be deemed at issue as provided by Rule 38.

Rule 305. Action for Adjustment of Partnership Items of Large Partnership Treated as Action for Readjustment of Partnership Items of Large Partnership

If, after the filing of a petition for adjustment of partnership items of a large partnership (see Code Section 6252(a) and Rule 301(a)) but before the hearing of such petition, the Commissioner mails to the large partnership a notice of partnership adjustment for the partnership taxable year to which the petition relates, then such petition shall be treated as a petition in an action for readjustment of the partnership items to which such notice relates. The petitioner, within 90 days after the date on which the notice of partnership adjustment is mailed, shall file an amendment to the petition, setting forth every error which the petitioner alleges to have been committed by the Commissioner in the notice of partnership adjustment, and the facts on which the petitioner bases the assignments of error. A copy of the notice of partnership adjustment shall be appended to the amendment to the petition.

TITLE XXX.—ACTIONS FOR DECLARATORY JUDGMENT RELATING TO TREATMENT OF ITEMS OTHER THAN PARTNERSHIP ITEMS WITH RESPECT TO AN OVERSHELTERED RETURN¹

Rule 310. General

(a) Applicability: The Rules of this Title XXX set forth the provisions which apply to actions for declaratory judgment relating to treatment of items other than partnership items with respect to an oversheltered return pursuant to Code Section 6234. Except as otherwise provided in this Title, the other Rules of Practice and Procedure of the Court, to the extent pertinent, are applicable to such actions for declaratory judgment.

(b) Definitions: As used in the Rules in this Title—

(1) An “oversheltered return action” means an action for declaratory judgment provided for in Code Section 6234 relating to the treatment of items other than partnership items with respect to an oversheltered return.

(2) The term “partnership item” means any item described in Code Section 6231(a)(3).

(3) An “oversheltered return” means an income tax return which—

(A) shows no taxable income for the taxable year, and

(B) shows a net loss from partnership items. See Code Section 6234(b).

(4) “Declaratory judgment” is the decision of the Court in an oversheltered return action.

(c) Jurisdiction: The Court shall have jurisdiction of an action for declaratory judgment under this Title when the following conditions are satisfied:

(1) The Commissioner has issued a notice of adjustment. See Code Section 6234(a)(3).

(2) A petition for declaratory judgment is filed with the Court within the period speci-

¹ Title XXX provided on an interim basis pending formal publication in the Reports of the Court by the Government Printing Office.